

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Denial of the  
Adult Foster Care License Application  
of Allen Yancey

**RECOMMENDED ORDER ON  
DEPARTMENT'S MOTION  
FOR SUMMARY DISPOSITION**

This matter is pending before the undersigned Administrative Law Judge pursuant to a Notice of and Order for Hearing issued on January 3, 2012. The Department of Human Services filed a Motion for Summary Disposition and supporting materials on March 21, 2012. The Administrative Law Judge scheduled a conference call for March 30, 2012, to explain to the Applicant what he would need to do to respond to the Motion, but the Applicant did not call in to participate in the conference call. The Administrative Law Judge notified the Applicant by letter dated April 2, 2012, that he should respond to the Motion in writing by April 6, 2012, if he wished to proceed with the appeal. The OAH record remained open until April 10, 2012, for receipt of a response from the Applicant, but no response was received by the date of this Recommended Order.

Ben Rosene, Assistant Ramsey County Attorney, appeared on behalf of the Department of Human Services (the Department or DHS) and Ramsey County Human Services (County). As noted above, there was no appearance by or on behalf of the Applicant, Allen Yancey.

Based on the record in this matter, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

**RECOMMENDATION**

**IT IS HEREBY RECOMMENDED** that:

1. The Commissioner GRANT the Department's Motion for Summary Disposition.
2. The Commissioner DENY the application of Allen Yancey for an adult foster care license.

Dated: May 10, 2012

s/Kathleen D. Sheehy  
KATHLEEN D. SHEEHY  
Administrative Law Judge

## MEMORANDUM

### Summary Disposition Standard

The Department has filed a motion for summary disposition in this matter. Summary disposition is the administrative equivalent of summary judgment.<sup>1</sup> Summary judgment is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.<sup>2</sup> A genuine issue is one that is not a sham or frivolous, and a material fact is one which will affect the outcome of the case.<sup>3</sup> The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.<sup>4</sup>

The moving party must demonstrate that no genuine issues of material fact exist.<sup>5</sup> If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts are in dispute that can affect the outcome of the case.<sup>6</sup> It is not sufficient for the nonmoving party to rest on mere averments or denials; it must present specific facts demonstrating a genuine issue for trial.<sup>7</sup> When considering a motion for summary judgment, the Judge must view the facts in the light most favorable to the non-moving party.<sup>8</sup> All doubts and factual inferences must be resolved against the moving party.<sup>9</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.<sup>10</sup>

### Applicable Statutes

Applicants for adult foster care licenses and other DHS-licensed programs are required to undergo a background study as part of the application process.<sup>11</sup> If the Department determines that the preponderance of the evidence obtained during a background study indicates that the individual has committed an act that meets the definition of one of the crimes listed in the statute, the individual shall be disqualified from any position allowing direct contact with or access to persons receiving services

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<sup>1</sup> Minn. R. 5500 (K). All references to Minnesota Rules are to the 2010 edition.

<sup>2</sup> Minn. R. Civ. P. 56.03 and Minn. R. 5500 (K).

<sup>3</sup> *Highland Chateau v. Minnesota Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. App. 1984), rev. denied (Minn. February 6, 1985).

<sup>4</sup> Minn. R. 1400.6600.

<sup>5</sup> *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

<sup>6</sup> *Highland Chateau*, 356 N.W.2d at 808.

<sup>7</sup> Minn. R. Civ. P. 56.05.

<sup>8</sup> *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. App. 1984).

<sup>9</sup> *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

<sup>10</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

<sup>11</sup> Minn. Stat. § 245C.03, subd. 1. All references to Minnesota Statutes are to the 2011 edition.

from the program.<sup>12</sup> The Commissioner has authority to deny a license if the applicant has a disqualification that has not been set aside and no variance has been granted.<sup>13</sup>

Depending on the crime, the length of the disqualification period is 7 years, 10 years, 15 years, or permanent in nature.<sup>14</sup> The crimes for which permanent disqualification is required include felony assault in the second degree as described in Minn. Stat. § 609.222.<sup>15</sup> The Commissioner of Human Services is prohibited from granting a variance or setting aside a permanent disqualification regardless of how much time has passed since the disqualifying incident occurred.<sup>16</sup>

Under applicable state statutes, an individual who receives a notice of disqualification related to a background study conducted for adult foster care has the right to submit a request for reconsideration within 30 calendar days of receiving the notice.<sup>17</sup> If the individual does not make a timely request for reconsideration of a disqualification that was based on a preponderance of the evidence determination, the disqualification is deemed to be conclusive.<sup>18</sup>

## **Factual Background**

Allen Yancey, the Applicant, applied to Ramsey County Human Services for an adult foster care license. During the background study, the Federal Bureau of Investigation (FBI) and the Michigan State Police in South Haven, Michigan, provided information about an incident involving the Applicant that occurred on May 20, 1984.

According to the reports received by the Department, Mr. Yancey had approached a male acquaintance (Ricky Nunn) who had previously reported Mr. Yancey for growing marijuana. Mr. Nunn alleged that Mr. Yancey had beat up Mr. Nunn's girlfriend two days earlier and indicated that he and Mr. Yancey had a feud going on. Mr. Nunn reported that Mr. Yancey stopped his car next to Mr. Nunn and another individual (Theron Bradley) as they were walking on the street, got out of his car, and started an argument about the girlfriend being beaten up. Mr. Yancey tried to persuade Mr. Nunn that he was not involved in the beating. After arguing with Mr. Nunn, Mr. Yancey pulled out a small black handgun, aimed it at him, and threatened to shoot him. Mr. Nunn and Mr. Bradley ran away and called the police. When police separately interviewed Mr. Nunn and Mr. Bradley, they both gave the same description of the incident and the weapon. Mr. Bradley verified that he heard Mr. Yancey threaten to shoot Mr. Nunn and saw Mr. Yancey aim the weapon at Mr. Nunn. Mr. Bradley

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<sup>12</sup> Minn. Stat. §§ 245C.14; 245C.15, subd. 1. Minn. Stat. § 245C.15, subd. 1(c), provides that an individual's offense in any other state permanently disqualifies the individual where the elements of the offense are substantially similar to the offenses listed in Minn. Stat. § 245C.15, subd. 1(a).

<sup>13</sup> Minn. Stat. § 245A.05(a)(3).

<sup>14</sup> Minn. Stat. § 245C.15.

<sup>15</sup> Minn. Stat. § 245C.15, subd. 1.

<sup>16</sup> Minn. Stat. §§ 245C.24, subd. 2, and 245C.30, subd. 1(a).

<sup>17</sup> Minn. Stat. 245C.21, subd. 1.

<sup>18</sup> Minn. Stat. §§ 245C.29, subd. 2(a)(3)(ii).

further alleged that, while Mr. Yancey was waving the gun around, he also pointed it at Mr. Bradley.<sup>19</sup>

During an interview with police approximately one hour after the incident, Mr. Yancey was visibly intoxicated. He had stitches in his lip and alleged that Mr. Nunn “had something to do with that assault.” He denied that he had a gun during the incident and no gun was found in his possession. Mr. Yancey provided inconsistent information about whether or not he had gotten out of his car and whether or not Mr. Nunn had hit him. Mr. Yancey also told police that he had gotten a 15” length of pipe out of his car after Mr. Nunn had taken a swing at him and missed, and invited Mr. Nunn to “come at him.” Mr. Yancey indicated that Mr. Nunn had then backed down. When asked if Mr. Nunn had something in his hands at the time, Mr. Yancey stated, “Well, he could have.” Mr. Yancey repeatedly told police that he was going to kill Mr. Nunn for turning the police on him.<sup>20</sup>

Mr. Yancey was ultimately arrested and taken into custody on a charge of felonious assault. A preliminary hearing was held on May 30, 1984, and Mr. Bradley failed to show up for court. A bench warrant was obtained charging Mr. Bradley with contempt of court. On November 28, 1984, the charge was dismissed at the request of the prosecutor and the matter was closed.<sup>21</sup>

Based upon a review of the information obtained during the background study, the Department determined that there was a preponderance of the evidence that Mr. Yancey had committed an act on May 20, 1984, that met the definition of felony second degree assault within the meaning of Minn. Stat. § 609.222. As a result, the Department determined that Mr. Yancey was permanently disqualified from any position allowing direct contact with, or access to, persons receiving services from a licensed adult foster care program. The Department notified Mr. Yancey in a letter dated July 28, 2011, of its determination. The disqualification letter advised Mr. Yancey of his right to request reconsideration of the disqualification within 30 days. The letter also notified Mr. Yancey that the disqualification may result in the denial of a license under Minn. Stat. § 245A.05 and that failure to do so would be treated by the Commissioner as Mr. Yancey’s acceptance of the disqualification.<sup>22</sup> The Department alleged that Mr. Yancey failed to request reconsideration of the disqualification within the time period allowed by under Minn. Stat. § 245C.21,<sup>23</sup> and Mr. Yancey has not disputed this fact.

On December 15, 2011, the Department issued an Order denying Mr. Yancey’s application to provide adult foster care. The Department stated in the Order of Denial that, because Mr. Yancey had not submitted a request for reconsideration of the disqualification, the disqualification was conclusive. The Order informed Mr. Yancey of

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<sup>19</sup> Standard Crime Report (attached to Raether Aff. as Exhibit D).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Letter to Allen Yancey from Kristin Johnson, Supervisor, Division of Licensing (July 28, 2011) (attached to Affidavit of Jason S. Raether as Exhibit A).

<sup>23</sup> Order of Denial at 3 (Dec. 15, 2011) (attached to Raether Aff. as Exhibit B); Exhibit A at 2 (attached to Notice of and Order for Hearing).

his right to appeal the decision to deny his license application and obtain a contested case hearing, but indicated that the scope of the contested case hearing would not include the disqualification because it was now conclusive.<sup>24</sup>

Mr. Yancey subsequently filed a timely appeal of the Order of Denial.<sup>25</sup> In his letter of appeal, Mr. Yancey urged the Department to grant his adult foster care license. He indicated that he had been with his second wife for 20 years and had also stopped drinking and smoking cigarettes 20 years ago. He acknowledged that he had made mistakes when he was younger but asserted that he had grown up and set examples for his daughters and grandchildren. He further stated that he wanted to show the same love and care to adults and children with disabilities. Mr. Yancey did not address the May 20, 1984, incident or provide any explanation for his failure to send a request for reconsideration regarding the disqualification.

The Notice of and Order for Hearing initiating the present contested case proceeding was served on Mr. Yancey on February 8, 2012. In Appendix A attached to the Notice of and Order for Hearing, the Department indicated that it intended to file a motion for summary disposition prior to the scheduled hearing date. The Department noted that Mr. Yancey's failure to request reconsideration had resulted in the disqualification becoming conclusive by operation of law and asserted that there thus were no genuine issues of material fact in dispute.<sup>26</sup>

The Department filed its Motion for Summary Disposition and supporting materials on March 21, 2012. The Administrative Law Judge scheduled a conference call for March 30, 2012, to explain to the Applicant what he would need to do to respond to the Motion, but the Applicant did not call in to participate in the conference call. Counsel for the Department informed the Administrative Law Judge that Mr. Yancey had told him during a telephone conversation that he may not want to proceed with the appeal of his disqualification. The Administrative Law Judge thereafter notified the Applicant by letter dated April 2, 2012, that he should respond to the Motion in writing by April 6, 2012, if he wished to proceed with the appeal. The Judge also requested that Mr. Yancey provide written notification if he did not want to proceed with his appeal. To date, Mr. Yancey has not provided notice that he wished to withdraw his appeal, submitted a written response opposing the Department's Motion for Summary Disposition, or otherwise disputed any of the assertions made by the Department.

## **Discussion**

Minnesota law states that the crime of assault in the second degree encompasses situations in which an individual assaults another with a dangerous weapon, and specifies that offenders may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both.<sup>27</sup> The term

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<sup>24</sup> Order of Denial at 3 (Dec. 15, 2011) (attached to Raether Aff. as Exhibit B).

<sup>25</sup> Letter to Division of Licensing – Commissioner from A. Yancey received by DHS on Dec. 22, 2011 (attached to Raether Aff. as Exhibit C).

<sup>26</sup> Appendix A at 2 (attached to Notice of and Order for Hearing).

<sup>27</sup> Minn. Stat. § 609.222, subd. 1.

“assault” is defined in Minnesota criminal statutes to mean: “(1) an act done with intent to cause fear in another of immediate bodily harm or death; or (2) the intentional infliction of or attempt to inflict bodily harm upon another.”<sup>28</sup> Any firearm, whether loaded or unloaded, falls within the statutory definition of “dangerous weapon.”<sup>29</sup> “Bodily harm” is defined to mean “physical pain or injury, illness, or any impairment of physical condition.”<sup>30</sup> The act of pointing a gun at another and threatening to shoot clearly reflects an intent to cause fear in another of immediate bodily harm or death, and thus constitutes assault in the second degree under Minn. Stat. § 609.222, subd. 1. This offense is a felony offense because a sentence of imprisonment for more than one year can be imposed,<sup>31</sup> and thus is a permanent disqualification under Minn. Stat. § 245C.15, subd. 1.

Mr. Yancey has not provided any evidence that he, in fact, sought reconsideration of the Department’s disqualification determination. As a result, his disqualification became conclusive under Minn. Stat. § 245C.29, subd. 2(a)(3)(ii), and cannot be challenged in the current contested case proceeding. Because Mr. Yancey has a permanent disqualification that cannot be set aside, his application must be denied.

For these reasons, the Administrative Law Judge recommends that the Commissioner grant the Department’s Motion for Summary Disposition. There are no genuine issues of material fact, and the Department has demonstrated that it is entitled to judgment as a matter of law. Accordingly, the Department’s order denying Mr. Yancey’s application for an adult foster care license should be affirmed without further proceedings.

**K. D. S.**

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<sup>28</sup> Minn. Stat. § 609.02, subd. 10.

<sup>29</sup> *Id.*, subd. 6.

<sup>30</sup> *Id.*, subd. 7.

<sup>31</sup> *Id.*, subd. 2.